

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

RICHARD A. GRISWOLD,	)	8:14CV89
	)	
Petitioner,	)	
	)	
v.	)	<b>MEMORANDUM</b>
	)	<b>AND ORDER</b>
BRIAN GAGE, Warden,	)	
	)	
Respondent.	)	

This matter is before the court on Petitioner's Motion for Leave to Appeal in Forma Pauperis ("IFP") (Filing No. [23](#)), joint Notice of Appeal and Motion for Certificate of Appealability (Filing No. [19](#)), and a Memorandum from the Office of the Clerk advising the court that Petitioner's Notice of Appeal appears to be untimely (Filing No. [21](#)).

**I. MOTION FOR LEAVE TO APPEAL IFP**

Pending before the court is Petitioner's Motion for Leave to Appeal IFP. (Filing No. [23](#).) Pursuant to [28 U.S.C. § 1915\(a\)\(1\)-\(2\)](#), and after considering Petitioner's financial status as shown in the records of this court, leave to proceed in forma pauperis on appeal will be granted and Petitioner is relieved from paying the appellate filing fee at this time.

**II. NOTICE OF APPEAL**

The court dismissed Petitioner's habeas corpus petition without prejudice and entered judgment against him on June 18, 2014. (Filing Nos. [17](#) and [18](#).) The court received Petitioner's Notice of Appeal on July 21, 2014. (Filing No. [19](#).) However, it is clear Petitioner deposited his notice of appeal in the prison mail system on or before July 17, 2014, because the envelope is postmarked July 17, 2014. (Filing No.

19 at CM/ECF p. 2.) Therefore, the undersigned judge will use July 17, 2014, as the date upon which Petitioner delivered the notice of appeal to prison authorities for mailing, and consider the Notice of Appeal timely filed. *See Fed. R. App. P. 4(c)(1)* (the prison mail box rule); *see also Sulik v. Taney Co.*, 316 F.3d 813, 814-15 (8th Cir. 2003) (relying on postmark date as date deposited in prison mail system).

### **III. CERTIFICATE OF APPEALABILITY**

In the court's order denying the petition for writ of habeas corpus, the court determined that it would not issue a certificate of appealability in this matter. (Filing No. 17.) The court has carefully reviewed Petitioner's request for a certificate of appealability (Filing No. 19), and finds no reason to reconsider its order denying a certificate of appealability.

IT IS THEREFORE ORDERED that:

1. Petitioner's Motion for Leave to Proceed IFP is granted. (Filing No. 23.)
2. For the reasons set forth in the court's Memorandum and Order dated June 18, 2014, the court will not issue a certificate of appealability in this matter.

DATED this 11<sup>th</sup> day of August, 2014.

BY THE COURT:

s/ Joseph F. Bataillon  
United States District Judge

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